

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RICHARD R. SAINTCALLE,)	CASE NO. C06-0040-MJP-MAT
)	
Plaintiff,)	
)	
v.)	ORDER DENYING PLAINTIFF'S
)	MOTION TO AMEND COMPLAINT
C/O L. RODRIGUEZ, et al.,)	
)	
Defendants.)	
_____)	

This matter comes before the Court on plaintiff's motion to amend his complaint. The Court having reviewed plaintiff's motion, defendants' response thereto, plaintiff's reply brief in support of his motion¹, and the balance of the record, does hereby find and ORDER as follows:

(1) Plaintiff's motion to amend his complaint (Dkt. No. 20) is DENIED. Plaintiff, by way of the instant motion, seeks to add five new defendants and two new legal claims to this action. Defendants argue that plaintiff's motion should be denied because amendment would be futile. This Court agrees.

In his original complaint, plaintiff alleged that he was in the custody of two King County

¹ Plaintiff's unopposed motion for an extension of time to file his reply brief (Dkt. No. 28) is GRANTED. Plaintiff's reply brief was received on May 11, 2006, and has been made a part of the record.

01 Department of Adult and Juvenile Detention corrections officers, L. Rodriguez and M. Hurt, when
02 he was attacked in open court by his son, Kirk SaintCalle, and that this attack violated his due
03 process rights. Plaintiff identified correctional officers Rodriguez and Hurt as the only defendants
04 in his original complaint. In his proposed amended complaint, plaintiff re-alleges that the attack
05 violated his due process rights. He further alleges that the attack violated his rights to equal
06 protection and to be free from cruel and unusual punishment. In addition to defendants Rodriguez
07 and Hurt, plaintiff identifies King County Superior Court Judge Richard McDermott, King County
08 Deputy Prosecutor Thomas Bradshaw, King County Superior Court Bailiff Nikki Riley, King
09 County Corrections Sergeant Mike Myers, and Federal Way Police Officer Thomas Robinson as
10 defendants in this action.

11 As to plaintiff's proposed new claims, the Court notes that plaintiff, in his reply brief in
12 support of his motion to amend, expressly withdraws his Eighth Amendment claim. Thus, the
13 Court need not consider whether it is appropriate to allow plaintiff to add such a claim to this
14 action. The Court must, however, consider whether it is appropriate to allow plaintiff to add his
15 proposed equal protection claim to this action.

16 The Equal Protection Clause of the Fourteenth Amendment provides that no state shall
17 "deny to any person within its jurisdiction the equal protection of the laws." In order to state an
18 equal protection claim under § 1983, a plaintiff must show that the defendants acted with an intent
19 or purpose to discriminate against the plaintiff based upon membership in a protected class.
20 *Barren v. Harrington*, 152 F.3d 1193, 1994 (9th Cir. 1998)(citations omitted). Plaintiff sets forth
21 no facts in his proposed amended complaint which even remotely support a claim of an equal
22 protection violation. In his reply brief in support of his motion, plaintiff argues that he received

01 disparate treatment based upon his race, nationality, and the nature of the crime he was on trial
02 for. However, his contentions are largely conclusory and are not sufficient to allege a cause of
03 action under § 1983. Plaintiff's request to add an equal protection claim to this action is therefore
04 denied.

05 Plaintiff's request to add new defendants to this action must also be denied. The Court
06 explains this conclusion as to each of the proposed new defendants below.

07 (a) Plaintiff seeks to add Sergeant Mike Myers as a defendant in this action. Plaintiff
08 identifies Sergeant Myers as the Court Detail Supervisor for the King County Department of Adult
09 and Juvenile Detention. Plaintiff contends that Sergeant Myers is responsible for determining
10 staffing needs for any given detail and taking into account threat potential. Plaintiff asserts that
11 Sergeant Myers knew of threats made by Kirk SaintCalle towards plaintiff, and, thus, that he
12 should have assigned additional officers to the courtroom and that he should have briefed his
13 officers to request backup if Kirk SaintCalle were to enter the courtroom.

14 In effect, plaintiff is seeking to have Sergeant Myers held liable because of his supervisory
15 position. However, suit brought pursuant to § 1983 cannot be based upon vicarious liability alone,
16 but must allege that a defendant's own conduct violated the plaintiff's civil rights. *City of Canton*
17 *v. Harris*, 489 U.S. 378, 385-90 (1989); *Monell v. Department of Social Servs.*, 436 U.S. 658,
18 694 (1978). Plaintiff's allegations about what he believes Sergeant Myers should have done in his
19 supervisory role are insufficient to demonstrate that Sergeant Myers personally participated in
20 causing the specific harm alleged in the complaint. *See Arnold v. IBM*, 637 F.2d 1350, 1355 (9th
21 Cir. 1981).

22 (b) Plaintiff seeks to add King County Superior Court Judge Richard McDermott, King

01 County Deputy Prosecuting Attorney Thomas Bradshaw, and King County Superior Court Bailiff
02 Nikki Riley as defendants in his action. The Supreme Court of the United States has held that, in
03 light of common law immunity principles, persons who perform official functions in the judicial
04 process are absolutely immune from liability for damages under 42 U.S.C. § 1983. *Briscoe v.*
05 *LaHue*, 460 U.S. 325, 334-36 (1983). Decision related to courtroom security are certainly ones
06 which are within the scope of a judicial officers' official functions. Thus, Judge McDermott and
07 his bailiff, who acts at the discretion of the judge, are entitled to immunity in this action. *See*
08 *Mireles v. Waco*, 502 U.S. 9, 9-12 (1991)(judicial immunity); *Haldane v. Chagnon*, 345 F.2d 601,
09 604 (9th Cir. 1965).

10 As to the prosecuting attorney, Mr. Bradshaw, the Court first notes that plaintiff fails to
11 offer any facts demonstrating that this individual had any duty to act to protect plaintiff. Plaintiff
12 was not in Mr. Bradshaw's immediate custody and Mr. Bradshaw is not charged with providing
13 physical protection for defendants. However, to the extent that providing such protection might
14 somehow be deemed to be within the scope of Mr. Bradshaw's official responsibilities, Mr.
15 Bradshaw is entitled to immunity as well. *See Imbler v. Pachtman*, 424 U.S. 409, 430-31 (1976)
16 (prosecutorial immunity protects a prosecutor who "acts within his or her authority and in a quasi-
17 judicial capacity").

18 (c) Plaintiff identifies Federal Way Police Officer Thomas Robinson as a defendant in
19 this action. Plaintiff appears to be of the belief that because Officer Robinson knew of threats
20 made by Kirk SaintCalle towards plaintiff, and because he is a police officer, he had a duty to
21 protect plaintiff in the courtroom. However, plaintiff was not in the custody of Officer Robinson
22 at the time of the attack, he was in the custody of the King County Department of Adult and

01 Juvenile Detention. In addition, plaintiff alleges no facts suggesting that Officer Robinson created
02 the danger which plaintiff complains of. Accordingly, plaintiff has no constitutional right to sue
03 Officer Robinson for his failure to protect plaintiff from harm inflicted by Kirk SaintCalle. *See*
04 *L.W. v. Grubbs*, 974 F.2d 119, 121 (9th Cir. 1992).

05 (2) For the foregoing reasons, plaintiff will not be permitted to amend his complaint
06 at the present time. The Clerk is directed to send copies of this Order to plaintiff, to counsel for
07 defendants, and to the Hon. Marsha J. Pechman.

08 DATED this 23rd day of May, 2006.

09 
10 Mary Alice Theiler
11 United States Magistrate Judge
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